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5 Attorney for Defendant ESAU FERDINAND

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA

11 No. CR13 0764 WHO

12 Plaintiff,

13 v.

14 ESAU FERDINAND,

15 Defendant.

16 **NOTICE OF MOTION AND MOTION**
TO EXCLUDE EVIDENCE OF DNA
TESTING PERFORMED BY
SEROLOGICAL RESEARCH
INSTITUTE AND REQUEST FOR
DAUBERT HEARING

17 Date: January 22, 2016
18 Time: 9:00 a.m.
19 Crtrm.: Honorable William H. Orrick

20 **TO: THE UNITED STATES DISTRICT COURT; ASSISTANT UNITED STATES**
ATTORNEYS WILLIAM FRENTZEN, DAMALI TAYLOR AND SCOTT
JOINER; ALL DEFENSE COUNSEL; AND TO THE CLERK OF THE COURT:

21 Defendant Esau Ferdinand hereby moves to exclude evidence of the testing performed by
22 the Serological Research Institute (“SERI”) in January of 2015 on mixtures of DNA obtained
23 from a red baseball cap and an Acura automobile. The mixtures are part of the investigation in to
24 the Jelvon Helton homicide in November of 2010. The government provided notice that it
25 intended to introduce evidence of the testing of these mixtures in its expert disclosure of October
26 21, 2015, through the testimony of Gary Harmor, Director of SERI, and Casseday Baker,
27 Forensic Serologist 1 at SERI.

28 Defendant Ferdinand will move to exclude this evidence under *Daubert v. Merrell Dow*
Pharmaceuticals, Inc., 509 U.S. 579, 589-95 (1993), and Rule 702 of the Federal Rules of
Evidence on the grounds that the test results SERI achieved from its analysis of the DNA

1 mixtures and the conclusions it drew from the test results are unreliable "bad science". Defendant
2 Ferdinand requests that a *Daubert* hearing be conducted to better inform the analysis of the
3 factual and legal issues this motion raises.

4 Defendant Ferdinand has requested funding from the court for DNA analysis by
5 recognized DNA expert, California State University East Bay Associate Professor Keith Inman.
6 The SERI reports relating to Defendant Ferdinand discussed in this motion have been forwarded
7 to Associate Professor Inman, but have yet to be fully analyzed with the associated raw data. For
8 that reason, defendant requests leave to supplement this motion when Inman's analysis is
9 completed. With the filing date for *Daubert* motions set by the Court for today, Defendant
10 Ferdinand brings this preliminary motion to exclude DNA evidence and to request a *Daubert*
11 hearing to avoid a claim of waiver or undue delay. In the meantime, Defendant Ferdinand joins
12 in, and incorporates by reference the arguments and academic references in Defendant Gordon's
13 just filed DEFENDANT ADRIAN GORDON'S MOTION TO EXCLUDE DNA TEST
14 RESULTS AND REQUEST FOR DAUBERT HEARING (Dkt. No. 639). The issues attendant to
15 Defendant Gordon's motion involve the very same kind of suspect low copy number (LCN)
16 mixture DNA analysis involved in the SERI analysis addressed by this motion.

17 The motion is based on the United Constitution, the Federal Rules of Criminal Procedure,
18 this notice of motion and motion, the Memorandum of Points and Authorities attached hereto,
19 and the records, files, and pleadings in this of this case, particularly those relating to the DNA
20 testing and analysis conducted as part of the investigation in this case.

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22
23 Dated: December 1, 2015

/s/

24 ROBERT WAGGENER
25 Attorney for Defendant
26 ESAU FERDINAND
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